



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 10-01669
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

December 29, 2011

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a history of financial problems or difficulties consisting of a 2001 Chapter 7 bankruptcy case and eight delinquent accounts for a total of about \$19,000. Seven of the eight debts remain unresolved, and Applicant does not have a realistic plan in place to resolve them. Applicant failed to present sufficient evidence to overcome the security concerns stemming from his problematic financial history. Accordingly, as discussed below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 10, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me August 24, 2011. The hearing took place October 19, 2011. The transcript (Tr.) was received October 27, 2011.

Findings of Fact

The SOR alleged a Chapter 7 bankruptcy that ended in a discharge of debts in 2001, and eight delinquent accounts in amounts ranging from \$31 to \$15,177 for a total of about \$19,000. In Applicant's reply to the SOR, his answers were mixed; he admitted the bankruptcy; he admitted three debts; he denied three debts claiming he owed lesser amounts; and he denied two debts claiming he paid them. His admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 56-year-old employee of a federal contractor. His employment history includes honorable military service in the U.S. Air Force. He served on active duty during 1973–1983, and he then served four years in the reserve. He has been continuously employed as an aircraft maintenance mechanic by the same company since 1999. He worked in a supervisory position from about 2001 or 2002 to late 2009, when he was demoted and had a loss of pay of about \$11,000 annually.

Applicant married for the first time in 1981; divorced in 1991; and remarried in 2010. His wife is 49 years old, and she is employed as a home healthcare aid. He has one adult child from his first marriage. He has two adult stepchildren from his second marriage. No children or grandchildren are living in his household.

Applicant has a history of financial problems going back to at least the 2001 Chapter 7 bankruptcy case. The bankruptcy came about when he was unable to meet

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

his financial obligations.² He did not recall the amount of debt that was discharged, but was certain it was less than \$100,000. He attributes his current indebtedness, as reflected by the eight delinquent debts in the SOR, to back taxes owed to the IRS for multiple tax years.³ In about 2006, the matter came to a head and the IRS garnished or levied his wages for about \$2,800 monthly for three months leaving him about \$500 each month. As a result, he fell behind on his other financial obligations. He resolved the matter with the IRS by agreeing to a monthly payment plan, which was completed over a two-year period. He is now current with his obligations to the IRS.

As alleged in the SOR, and established by Applicant's admissions and the documentary evidence,⁴ the eight delinquent debts consist of the following: (1) a \$516 collection account; (2) a \$1,067 collection account; (3) a \$31 medical collection account; (4) a \$179 collection account; (5) a \$15,177 collection account stemming from an auto repossession; (6) a \$1,547 collection account; (7) a \$651 charged-off account; and (8) a \$218 collection. Seven of the eight debts remain unpaid and unresolved.⁵ He did not present any paperwork (e.g., account statements, offers of settlement, correspondence, etc.) showing the status of these seven accounts or in support of his various claims. But he did present documentary proof of payment for the \$179 collection account.⁶ In addition, he presented proof of payment of an account held by a collection agency.⁷ He settled the debt for \$79 in September 2011. It does not appear to correspond to any of the debts in the SOR.

Applicant has not sought out counseling, assistance, or advice from a financial professional (e.g., an accountant, a certified financial counselor, a credit counselor, etc.) to address his debts. Likewise, he does not have a plan in place to address his debts. He has found it difficult to contact creditors, which has hindered his ability to address his debts.⁸ He described his current financial situation as "really not too good."⁹ Although he has the means to meet his current ongoing expenses, he lacks the means to address the debts in the SOR.¹⁰

² Tr. 44-45.

³ Exhibit 2. The matter with the IRS was not alleged in the SOR, and I have considered it for the limited purpose of explaining and understanding how Applicant came to be in his current predicament.

⁴ Exhibits 2-5.

⁵ Tr. 59-72.

⁶ Exhibit 3 at 2, 6; Tr. 63-65.

⁷ Exhibit A.

⁸ Tr. 75.

⁹ Tr. 81.

¹⁰ Tr. 81-82.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁰

The AG set forth the relevant standards to consider when evaluating a person’s security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense

¹¹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹² 484 U.S. at 531.

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline F for financial considerations,²² the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²³ The overall concern under Guideline F is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.²⁴

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. The 2001 Chapter 7 bankruptcy and the multiple delinquent debts—the majority of which are unresolved—raise security concerns. Taken together, these circumstances indicate inability or unwillingness to satisfy debts²⁵ and a history of not meeting financial obligations²⁶ within the meaning of Guideline F. The facts are

²¹ Executive Order 10865, § 7.

²² AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²³ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that “the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.”) (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, “the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.”) (citation omitted).

²⁴ AG ¶ 18.

²⁵ AG ¶ 19(a).

²⁶ AG ¶ 19(c).

sufficient to establish these two disqualifying conditions. The facts also show that Applicant's financial house is in disrepair.

There are six mitigating conditions to consider under Guideline F. Any of the following may mitigate security concerns:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;²⁷

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; or

AG ¶ 20(f) the affluence resulted from a legal source of income.

None of the mitigating conditions, individually or in combination, are sufficient to overcome and mitigate the security concerns.

The evidence of Applicant's problematic financial history justifies current doubts about his judgment, reliability, and trustworthiness. Following *Egan* and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due

²⁷ ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) (“[T]he concept of ‘good faith’ requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.”) (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

consideration to the whole-person concept²⁸ and Applicant's favorable evidence, to include his years of honorable military service. With that said, he has done little to help himself. After his Chapter 7 bankruptcy case in 2001, he became entangled with the IRS over back taxes owed for multiple tax years. Although he was eventually able to resolve that problem, it resulted in falling behind on his other financial obligations. As reflected in the SOR, this amounted to about \$19,000 in delinquent debts. Of those debts, he paid one creditor the sum of \$218 to resolve a \$179 collection account.

Applicant's problematic financial history is largely unresolved and it is ongoing. And that history is inconsistent with the high standards that apply to those who are granted access to classified information. Perhaps in the future when Applicant has made a good-faith effort to repay or resolve these debts, or there are clear indications that his financial problems are being resolved or under control, he can reapply for a security clearance with the sponsorship of an employer. But based on the evidence before me, it is too soon to tell if or when Applicant will put his financial house in good order. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.i:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard
Administrative Judge

²⁸ AG ¶ 2(a)(1)–(9).